

## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

Original  Updated  Corrected

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2. Administrative Rule Chapter, Title and Number

Chapter NR 40, Invasive Species Identification, Classification and Control

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3. Subject

Revisions to classify additional invasive species into existing categories established in NR 40, address accommodations to facilitate compliance with NR 40, clarify language, and improve organization of the rule.

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4. Fund Sources Affected

GPR  FED  PRO  PRS  SEG  SEG-S

5. Chapter 20, Stats. Appropriations Affected

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6. Fiscal Effect of Implementing the Rule

No Fiscal Effect  Increase Existing Revenues  Increase Costs  
 Indeterminate  Decrease Existing Revenues  Could Absorb Within Agency's Budget  
 Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

State's Economy  Specific Businesses/Sectors  
 Local Government Units  Public Utility Rate Payers  
 Small Businesses (if checked, complete Attachment A)

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes  No

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9. Policy Problem Addressed by the Rule

Revisions of NR 40 will classify additional invasive species into existing categories established in ch. NR 40, Wis. Admin. Code, making them subject to existing administrative rules and statutes that regulate the introduction, possession, transfer, and transport of invasive species in order to prevent them from becoming established in Wisconsin or to prevent already-established invasive species from spreading within the state.

When ch. NR 40 became effective Sept. 1, 2009, a number of invasive species were not included pending additional assessment. During the public input and drafting processes for the 2009 rule, it was recognized that many additional species may need to be evaluated and, if appropriate, categorized and listed under this rule. Most of these species are used by some sector of society and we need to get input from the affected stakeholders. The requested current rule change will add species of terrestrial plants, aquatic plants, vertebrates, and both terrestrial and aquatic invertebrates to the invasive species rule. Other proposed revisions will facilitate compliance with NR 40, clarify language, and improve organization of the rule.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

Affected parties may include the nursery, landscape, forestry, seed and agriculture industries, fish farmers, bait dealers, commercial fishers and wholesale fish dealers, aquarium and ornamental fish dealers, game farms, anglers, landowners, gardeners, county and municipal governments, Native American Indian tribes, lake districts, state agencies, and environmental and conservation organizations.

The Wisconsin Invasive Species Council reviewed and assessed a list of species for inclusion in the proposed rule revision and actively engaged their contacts in the process. The Council includes representatives the Departments of Natural Resources; Administration; Agriculture, Trade and Consumer Protection; Commerce; Tourism; Transportation and seven other Council members that are drawn from agriculture; nursery industry; NGOs (TNC); UW; and forestry.

As part of the information gathering and outreach process, a letter was sent to 600 retailers and growers and approximately 1,100 licensed growers and dealers from the November 2, 2012 DATCP list of license holders

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updating them on the process in December 2012. A series of informal public information sessions about the proposed changes to the rule were held from February 25 - March 15 in Madison, Milwaukee, Spooner, Rhinelander, and La Crosse to inform interested parties that the revisions were under development and to solicit informal comments on the potential impact of the rule. Approximately 41 people attended and 52 public comments were received during the informal discussion period.

Between October 28 and December 31, 2013, the department solicited comments on the economic impact of the proposed rule revision. The preliminary Fiscal Estimate and Economic Impact Analysis were updated based on the economic comments received.

Prompted by public comments received on the economic impacts of the proposed rule changes, it was determined that the plant bittercress (*Cardamine hirsuta*) does not meet the definition of prohibited under NR 40 because eradication and containment is not feasible. This plant was removed from the proposed list of prohibited species included in the initial board order.

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11. Identify the local governmental units that participated in the development of this EIA.

Pursuant to s. 227.137 Wis. Stats., the department solicited comments on the economic impact of the proposed rule, and coordinated with local governments that requested in the preparation of an Economic Impact Analysis (EIA). The Village of Cecil requested the department coordinate with them in preparation of the EIA. Department staff have been in consultation with the Village President.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The economic cost of listing a species is highly dependent on the impact it is having now, how wide spread it already is, how it is currently being used in trade, and the availability of species that can be substituted for the proposed species. The assumption of a significant impact is a conservative estimate that does not generally take into account the availability of substitute non-invasive species or the value of preventing the introductions of invasive species. The impact of removing newly regulated organisms from trade has a potentially high short term impact. It is anticipated that businesses will substitute alternative, non-invasive species over time. The high estimate also reflects the diversity of species under assessment, as well as the fact that a number of these species may be used by various sectors of society. During the species assessment process, the economic costs and benefits were discussed for each species considered for inclusion in the rule revisions. Certain species may have larger potential economic impacts than others and will be highlighted in the discussion that follows.

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13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Updating the regulated list of invasive species under NR 40 to include species that if removed from trade, or subject to reasonable precautions to prevent their spread can be contained, slowed, or prevented from establishing in Wisconsin reduces the ecological and economic harm caused by these invasive species in the future. The Wisconsin Invasive Species Council and the DNR's Strategic Plan for Invasive species estimated financial impacts of invasive species and illustrated the fiscal significance of updating the list. Listing species under the invasive species rule encourages action across jurisdictions and can focus control and containment efforts, improving their effectiveness. Invasive species are species that are non-native to Wisconsin and cause or have the potential to cause economic or environmental harm or harm to human health. By regulating these species that have been identified as both causing or potentially causing harm and that have the potential to be controlled through regulation, the intent is to create the largest possible benefit to both the economy and the Department's mission to protect and manage the resources of the state. These rule revisions provide valuable economic benefits by reducing future control and management costs for regulated invasive species.

The alternative considered in the detailed Economic Impact Analysis report is not listing additional invasive species for regulation. Past efforts to quantify where the economic impact from controlling invasive species falls have identified that individual landowners generally bear the highest cost to mitigate the damage these species cause while the economic benefits of continued use of a species are limited to a much smaller contingent. Other adversely affected entities include

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land managers (NGOs, State and local government, utilities, and the forest business) . The distributed impact of not listing species that are invasive species is likely to be greater.

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### 14. Long Range Implications of Implementing the Rule

The long range economic impacts include control costs, costs to comply with both the list of regulated species and with the required reasonable precautions, and increased enforcement burdens. The control costs for prohibited species where control is required when feasible will increase somewhat with the increased number of species listed as some of these species are likely to be introduced to Wisconsin and spread. However, it is anticipated that with a changing climate, continually increasing trade and exchange of materials, and the dispersal from populations already established, that the cost to control invasive species in Wisconsin will increase independent of the proposed regulation, and that regulation will reduce the number of these species being introduced.

The increased number of regulated species will reduce or eliminate those particular species in trade without restricting commerce overall since substitution of non-regulated species is likely. The long range implications for businesses are generally low as the initial cost to remove a species from sale and develop sources and propagation methods for substitute species will occur over a 1-7 year period and not reoccur. Costs to comply with reasonable precautions will be ongoing and are likely to decrease with time as new methods and tools increase the efficiency of these actions. The required reasonable precautions will continue to have benefits by reducing the likelihood that multiple species will spread through known pathways such as mowing equipment, forestry activities, boating, and nursery sales. The benefits of preventing the spread of invasive species will continue as long as the requirement to employ reasonable precautions remains in place.

The increased enforcement burden will require that both Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection staff will spend more time reviewing and learning the listed species and working with regulated parties. It is anticipated that these increased costs will be absorbed by the existing staff and programs.

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### 15. Compare With Approaches Being Used by Federal Government

There are no known proposed federal regulations that would provide the ability for the state to act when newly establishing invasive species are discovered. Existing regulations address a narrow subset of noxious weeds under the Federal Noxious Weed Act (7 U.S.C. 2801 et seq; 88 Stat, 2148) or animals under the Lacey Act (18 U.S.C. 42-43, 16 U.S.C. 3371-3378), primarily species that are already too widespread for a more cost-effective prevention approach.

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### 16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

\* Illinois: The Department of Agriculture maintains a statutory list under Illinois Noxious Weed Law of about 9 species (<http://www.agr.state.il.us/Laws/Regs/8iac220.pdf>) and the Illinois Department of Natural Resources links to a more comprehensive list of 102 invasive species and a shorter list of plants, animals, insects and diseases (<http://www.invasive.org/illinois/SpeciesofConcern.html>).

\* Iowa: Regulates several species of aquatic invasive plants - 6, aquatic invasive invertebrates, and invasive fish - 7. (<http://www.iowadnr.gov/idnr/Fishing/AboutFishinginIowa/FightingInvasiveSpecies/AquaticInvasiveInvertebrates.aspx>)

\* Michigan: Regulates a number of invasive aquatic plants - 18, fish - 12 plus all snakeheads, and other animals - 11 through Act 451 and requires prevention actions especially for aquatic invasive species ([http://www.legislature.mi.gov/\(S\(brw3y4554cagkv4554a24a45\)\)/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf](http://www.legislature.mi.gov/(S(brw3y4554cagkv4554a24a45))/documents/mcl/pdf/mcl-451-1994-iii-2-1-wildlife-conservation-413.pdf))

\* Minnesota: Regulates both aquatic and terrestrial invasive species in a process similar to Wisconsin with prohibited, restricted, and non-regulated categories as well as prevention requirements including regulating the transport of water. The species regulated as prohibited include aquatic plants - 14 plus all federally listed species except *Ipomoea aquatica*, fish - 14, aquatic invertebrates - 5, mammals - 4. The species regulated as restricted include aquatic plants - 6, birds - 3, fish - 5, and aquatic invertebrates - 3. In addition all crayfish are regulated.

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### 17. Contact Name

Dreux Watermolen, Section Chief, Social Science Services

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### 18. Contact Phone Number

(608) 266-8931

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

[Detailed EIA report attached]

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

Wisconsin Invasive Species Council, Wisconsin Nursery Industry member survey of the economic impact of potentially invasive species in Wisconsin, five informal public meetings to discuss recommended changes to the rule, Department Invasive Species Team staff, WDNR's Economist, and planned: collect public comments during the EIA comment period. Department staff met with the Small Business Environmental Council in January 2014 to discuss the proposed impacts to small businesses.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- Less Stringent Compliance or Reporting Requirements
- Less Stringent Schedules or Deadlines for Compliance or Reporting
- Consolidation or Simplification of Reporting Requirements
- Establishment of performance standards in lieu of Design or Operational Standards
- Exemption of Small Businesses from some or all requirements
- Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

For small businesses growing woody plants, a number of years have been invested into the infrastructure to grow particular species. To minimize economic impact of listing new species that are invasive in Wisconsin a phase out period of 5 years for trees and shrubs, and 3 years for all other plants once listed as Restricted would both reduce the economic impact and provide a defined period for achieving compliance without using permits for commercial activities. The compliance period would begin once the rule is in effect. Prohibited species would be immediately subject to regulation.

Through staff work with pet stores and other small businesses that had not previously been regulated by the DNR we learned that personal communication, clear and concise guides to regulated species, and education were important. Ensuring personal contact and taking an "education first" approach is consistent with DNR's policy of stepped enforcement and will be maintained for all taxa groups regulated under the invasive species rule.

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5. Describe the Rule's Enforcement Provisions

Enforcement and administration for the invasive species rule and permits are already in place. Some changes due to the increased number of species requiring review and training for identification are anticipated but cost are expected to be absorbed within existing DNR budgets and by DATCP staff who enforce provisions of the rule at licensed nurseries. Staff from both agencies have met and developed guidelines to continue a partnership of joint and cooperative enforcement. Management costs may rise with the addition of new species to the list but as the options for cost-sharing for control have not been funded in the past, it is unlikely that there will be any discernible operational impact. The policy of stepped enforcement is compatible with the changes proposed to the rule as "education first" is the priority for compliance.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- Yes     No
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